IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE ELEVENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION No: 5297 of 2005

Between:

1 The Commissioner of Commercial Taxes, Andhra Pradesh, Hyderabad.
2 The Deputy Commissioner of Commercial Taxes, Visakhapatnam Division, Visakhapatnam District
3 State of A.P., rep by Principal Secretary to Government, Revenue Department, Government of A.P., Secretariat, Hyderabad.

..... PETITIONERS

AND

S. Prakash S/o Narayana
Assistant Commercial Officer (Enforcement Wing)
O/o The Joint Commissioner of Commercial Taxes
(Enforcement), C.T. Building, Compound, MJ road, Nampally, Hyderabad

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an a Writ, order or direction more particularly one in the nature of Writ of Certiorari and calling for the records relating to the order passed in OA No. 667/2005 dated 18-02-2005 on the file of the Hon'ble A.P. Administrative Tribunal, Hyderabad and quash the same as illegal, arbitrary and pass such other order or orders as deemed fit and proper in the circumstances of the case.

Counsel for the Petitioners: GP FOR SERVICES II

Counsel for the Respondent: MR.P.V.KRISHNAIAH

The Court at the stage of admission made the following:

ORAL ORDER:- (PER GB,J)

The Writ Petition is filed by the Government assailing the interim order, dated 18.12.2005, passed by the A.P. Administrative Tribunal, Hyderabad in O.A.No.667 of 2005.

2. The matter relates to promotion to the post of Deputy Commercial Tax Officer in the cadre of Assistant Commercial Tax Officer. The Tribunal passed the following interim order:

> "In view of the above, pending consideration of the O.A. the respondents are directed to consider the case of the applicant for promotion to the post of Deputy Commercial Tax Officer, in accordance with the rules without reference to the disciplinary case, if no final orders have been passed in any of the disciplinary cases subject to the outcome of the disciplinary cases filed against the applicant pending consideration of the O.A."

3. Learned Government Pleader submits that the interim order has affected on final disposing of the O.A., and therefore, the Tribunal could not have passed such an order. Moreover, he submits that no counter has been filed before the Tribunal and even without waiting for a counter such an order was passed. Hence, it is liable to be set aside.

4. Now the learned counsel for the respondent submits that in all similar matters the Tribunal has already granted such a direction and the Department filed counters and sought for vacation of the interim direction. But, in the instant case, having not filed any counter, they rushed to this Court by filing this Writ Petition, and therefore, the Writ Petition is not maintainable.

5. Having heard the learned Government Pleader, we are not inclined to interfere with the matter inasmuch as similar matters are pending and counters have already been filed seeking vacation of the interim order. Under those circumstances, we direct that the averments made in this Writ Petition shall be treated as counter in the O.A. and direct the Tribunal to dispose of the vacate application along with the similarly situate applications within a period of six weeks from the date of receipt of a copy of this order. We also leave it open to the Department to file additional counter, if they so choose.

6. With the aforesaid directions, the Writ Petition is disposed of. No costs.

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G. BIKSHAPATHY, J

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P.S. NARAYANA, J

Date: 11.04.2005

ES/PRV

To

1 The Commissioner of Commercial Taxes, Andhra Pradesh, Hyderabad.
2 The Deputy Commissioner of Commercial Taxes, Visakhapatnam Division, Visakhapatnam District
3 The Principal Secretary to Government, State of A.P., Revenue Department, Government of A.P., Secretariat, Hyderabad.

4 The Registrar, A.P. Administrative Tribunal, Hyderabad.

5 2 CCs to the GP for Services-II, High Court of A.P., Hyderabad (OUT)

6 2 CD copies